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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1940

No. 810

CONSOLIDATED FREIGHTWAYS, INC.
Petitioner,

vs.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR A REHEARING.

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To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that this honorable Court grant a rehearing of petitioner's petition for writ of certiorari, and upon such rehearing grant certiorari and reverse the judgment of the Supreme Court of the State of California.

The facts in the case at bar are in their essentials identical to those in *Ohio Railroad Comm. v. Worthington,* 225 U. S. 101, 56 L. Ed. 1004, in which decision this court held it to be unlawful for a state to attempt regulation of the rates charged by a common carrier engaged exclusively in interstate commerce. Yet, in the case at bar this Court refuses to hear petitioner and permits the State of California to do the identical thing which this Court prohibited the State of Ohio from doing in the aforesaid *Worthington* case.

In the *Worthington* case a railroad, engaged exclusively in interstate commerce and operating wholly within the state, transported coal from a mine to a port where the railroad then loaded same into the vessel of another carrier and charged the shipper of the coal a rate for such transportation and loading. In the case at bar, petitioner unloads freight from another carrier in the state and transports it within the state to the ultimate consignees, and charges the shipper a rate covering the unloading and transportation. Petitioner is engaged exclusively in interstate commerce.

In both cases the rate sought to be regulated by the state is of the same character. In both cases the state pointed out that the Interstate Commerce Commission had exempted the subject of regulation from their jurisdiction and contended that until Congress acted the state could directly regulate the interstate commerce rates under the theory of "local concern."

In the *Worthington* case this Court gave the carrier the protection it needed through the commerce clause of the United States Constitution. Why does not this Court do likewise in the case at bar?

Petitioner contends that the law declared in the *Worthington* case is as sound today as it was in 1912 when Mr. Justice Day delivered the opinion of the Court. The very least that this Court should do in the interest of justice is to grant certiorari in the case at bar, and after a full hearing either uphold or overrule the *Worthington* case so that others in seeking protection from state encroachment upon interstate commerce may not be led to knock vainly upon the door of this Court for a hearing.

Petitioner's operations are no more of "local concern" than the operations of the railroad in the *Worthington* case. There is no impelling local community reason or need for state regulation of petitioner's "pool car" distribution service. The case at bar is unlike the grain elevator cases, the bridge toll cases, the harbor pilot cases and the public wharves cases relied upon by respondent herein. Those decisions uphold state regulation of commercial instrumentalities that handle intra and inter state commerce alike; that have peculiar elements of "local concern" founded upon their character as well as custom and history; and that but indirectly burden interstate commerce.

Even in *Wilmington Trans. Co. v. Calif. Railroad Comm.*, 236 U. S. 151, 59 L. Ed. 508, a decision which

respondent relies upon, this Court (236 U. S. at page 156) in distinguishing that case from the *Worthington* case restricts state rate regulation for commerce between Catalina Island and the mainland of California to such that commences and ends in California.

Petitioner is at a loss to know why this Court has cast aside the "direct and indirect" criteria for applying the commerce clause to particular situations, and also why the "multiple burden" doctrine cannot apply with equal validity to regulation as well as taxation of interstate commerce. Those doctrines have been thoroughly entrenched in the decisions of this Court and petitioner is convinced they are applicable to the case at bar.

Why is not a rate regulation which does not reasonably relate to highway protection, use or safety, void as being beyond the state's police power, particularly when such regulation directly burdens interstate commerce?

Why is it not beyond due process of law for a state to make an interstate carrier assume the burdens of a city carrier when the carrier cannot have the benefits of such status?

From the very inception of this litigation to date, covering a period of almost a year, your petitioner has been consistently and persistently urging these defenses to state encroachment upon its national motor carrier system. Although all the defenses involve substantial federal questions petitioner has yet to have

an opportunity to stand before a judicial tribunal and argue its convictions, and has yet to have a Court hear its cause in open Court and render an opinion upon its merits. Like crumbs to the starving, several dissenting votes (R. 19, 22) have given petitioner a scintilla of hope, but so far that has been all.

Petitioner has exhausted all of its remedies. It remains now for this Court, in the exercise of its wisdom and discretion, to give petitioner its day in Court.

By granting a rehearing and rendering an opinion this Court can definitely determine the extent to which states, if at all, might regulate the rates of interstate motor carriers, and thus put to rest a controversial nation-wide problem that touches petitioner in eight states and other operators throughout the land.

WHEREFORE, petitioner prays for a rehearing.

Dated, San Francisco, California,
April 21, 1941.

CONSOLIDATED FREIGHTWAYS, INC.
Petitioner.

HERBERT W. ERSKINE,
DONALD A. SCHAFER,
WILLIAM FARNUM WHITE,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL

The foregoing petition for a rehearing in the above-entitled cause is herewith presented in good faith and not for purposes of delay.

Dated, San Francisco, California,
April 21, 1941.

HERBERT W. ERSKINE,
DONALD A. SCHAFER,
WILLIAM FARNUM WHITE,
Counsel for Petitioner.